Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

In the Matter of	)	
	)	
Implementation of Section 621(a)(1) of the Cable	)	
Communications Policy Act of 1984 as amended	)	**MB Docket No. 05-311**
by the Cable Television Consumer Protection and	)	
Competition Act of 1992	)	

DECLARATION OF ANDY SARWAL
SENIOR VICE PRESIDENT BUSINESS DEVELOPMENT AND AFFAIRS
GRANDE COMMUNICATIONS

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I, Andy Sarwal, do hereby declare, under penalty of perjury, that the following is true and correct to the best of my knowledge:

1. My name is Andy Sarwal. I am Senior Vice President Business Development and Affairs at Grande Communications ("Grande"). My business address is 401 Carlson Circle, San Marcos, TX, 78666.

2. Grande provides a bundled package of cable television, telephone, and Internet and other broadband services over its own advanced networks in numerous markets in Texas. These networks are either fully fiber (fiber-to-the-home) or fiber-to-the-curb. As of September 30, 2005, these networks passed 328,041 homes and small businesses out of a total of approximately 1.4 million in the six markets, and Grande had 134,919 residential, small business, and enterprise customers.

3. Grande entered the market in early 2000, and by the middle of 2002, it had obtained franchise agreements in 30 municipalities in Texas. In major cities, it took at least 9

months to obtain franchise agreements; in smaller cities, approximately 6 months was the average time required to obtain a franchise.

4. Grande obtained additional franchises when it purchased ClearSource in 2002 and Advantex in 2004 and through its own applications in two cities more recently. As of September 30, 2005, Grande had a total of 49 franchises with municipalities in Texas. These municipalities include those in large markets, such as Houston, San Antonio, and Austin, and those in smaller markets, some with populations of less than 1,000.

5. In markets where Grande obtained franchises directly from municipal governments rather than through acquisition, there was an incumbent cable television provider, and Grande was the so-called "overbuilder." Grande's main selling-proposition was that its fiber network was state-of-the-art and could provide a much more extensive package of bundled voice, data, and video services than the incumbent and at lower prices.

6. From Grande's viewpoint, the franchising process in general was not a two-sided negotiation with the municipality. Rather, because there was most often an incumbent cable provider with a "competitive neutrality" or "most favored nation" provision in its franchise agreement, the process involved a one-way demand from the municipality: (1) sign an agreement that was virtually identical to the incumbent's and (2) agree to amend that agreement to include any new terms the incumbent agreed to in its subsequent franchise renewal. If Grande had not accepted these demands, it would not have obtained a franchise.

7. Such "competitive neutrality" provisions are more properly called "incumbent protection" provisions. They force the new entrant to bear all the same costs and requirements the incumbent accepts, but without having anywhere near the same number of subscribers over which to spread the costs. When incumbents installed their systems, they had a

captive market in which any resident or business that wanted cable services would have to take it from the incumbent. New entrants, such as Grande, have to "win" every customer from the incumbent, either directly or in competition, and have a diminished opportunity to recover the costs of the requirements that had been imposed on the incumbent. For instance, municipalities required us to pay the same amount as the incumbent for such items as PEG and I-Net contributions, letters of credit, bonds, pre-payments, and security deposits. Yet, the incumbent could allocate these costs over 100% of the cable television subscribers or about 60% of the total potential market, whereas Grande had to do so over a 0% market share when it first entered, and it never enjoyed the incumbent position as the exclusive provider of cable television service.

8. Similarly, Grande in practically all cases had to agree in the major markets to the same "buildout" requirements as the incumbent, even though, unlike the incumbent, it did not begin by having an exclusive agreement, and most of the incumbents' requirements were either when the cities were much smaller or were for upgrades of the incumbent system that was already ubiquitous in the market. The potential penalties imposed on Grande for failure to meet these requirements also were often excessive. For instance, in one market, they were $2,000 per day.

9. Let me provide some examples of other requirements imposed on Grande by franchising authorities. San Antonio required a $1 million prepayment of franchise fees, which has taken us more than five years to draw down. It also required that we fund a $50,000 scholarship with an additional $7,200 to be contributed each year. Corpus Christi demanded an upfront $200,000 payment for "PEG" channels. By front-loading these requirements and basing them on the incumbent's historic payments and obligations – rather than on an equivalent "per

subscriber" or "per revenue" basis – the speed of our entry was slowed, and our financial viability was threatened.

10. Grande agreed to these franchise requirements, despite these burdens, for one simple reason: it had no alternative.

11. Last summer, Texas enacted a new law which provides for statewide franchising. Grande considers this law much fairer to new entrants. The franchise fee and "PEG" funding requirements under the statute are assessed on a revenue or per subscriber basis.

12. The Texas law continues to permit municipalities full police power to manage their rights-of-way.

13. Shortly after Texas enacted the new statewide franchising statute last summer, Grande applied for and, on October 25, 2005, was granted a state issued certificate of franchise authority (SICFA) for the cities and unincorporated areas where it provides cable television service. When Grande's SICFA was approved, all of its 49 municipal franchises were terminated. [1]

[1] The Texas Cable and Telecommunications Association (TCTA), whose members include all of the incumbent cable TV providers in Texas, subsequently filed suit in Federal District and State Courts against the Texas Governor and the Public Utility Commissioners of Texas to have the statewide franchising statute ruled unlawful.

This concludes my declaration.

Andy Sarwal

Dated: 2-7-06